

The imposition of the various local sales taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order or other contracting action in the making of the sales contract. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. 86 Ill. Adm. Code 270.115. (This is a PLR).

June 3, 2002

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see [www.revenue.state.il.us/Laws/regs/part1200/](http://www.revenue.state.il.us/Laws/regs/part1200/)), is in response to your letter of May 22, 2002. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA. for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, AAA, we respectfully request the Illinois Department of Revenue ('the Department') to issue a private letter ruling pursuant to 2 Ill. Adm. Code Section 1200.110 with respect to the following factual situation.

***General Information***

1. Enclosed please find an original Form IL-2848 Power of Attorney, authorizing FIRM to represent AAA, before the Department of Revenue.
2. This PLR is not requested with regard to hypothetical or alternative proposed transactions. The PLR is requested to determine the sales tax consequences of the actual business practices of AAA.
3. AAA is not currently engaged in litigation with the Department in regard to this or any other tax matter.
4. The Department has not previously ruled regarding this matter for AAA. Neither AAA nor FIRM has submitted the same or similar issues to the Department.
5. AAA requests that certain information be deleted from the PLR prior to dissemination to others. AAA requests that its name, address, location of its

headquarters, description of products being purchased and the name of its representative be deleted.

6. AAA knows of no authority contrary to the authorities referred to and cited below.

### ***Statement of Material Fact***

AAA is a nationwide retailer headquartered in CITY/STATE. AAA sells its merchandise through several outlets: its own stores, contractual catalog merchants, its printed catalogs, and the internet. AAA is requesting a ruling from the Department as to the proper situsing for local tax purposes of its direct-ship sales (sales that are shipped from warehouses outside of Illinois directly to the customer or the customer's designated location, as opposed to sales shipped to a AAA location for pick-up by the customer) of catalog merchandise.

Historically, AAA has collected use tax on its direct-ship catalog orders because final order acceptance took place outside of Illinois and the orders were not filled from Illinois inventory. AAA has made changes to its order acceptance procedures which it believes result in final order acceptance being moved into the State of Illinois, thus converting AAA's direct-ship catalog sales from use tax transactions to sales tax transactions. These changes include opening an order acceptance office in CITY, Illinois, and hiring an employee to perform order acceptance functions in that office.

AAA's direct-ship catalog orders are entered by telemarketing specialists into AAA's mainframe computer. The orders are electronically transmitted to the Order Summary System, which conducts preliminary customer and credit checks. Orders which satisfy the preliminary requirements are deemed conditionally accepted. Conditionally accepted orders which have an Illinois ship-to address are then routed to AAA's order acceptance office in CITY, Illinois.

The conditionally accepted orders are routed electronically to the CITY order acceptance office, where an employee of AAA maintains the system parameters for the final order acceptance test. This test measures the amount of customer transportation charges versus the total order value excluding customer transportation and taxes. If the ratio described above is below the predetermined percentage, the order is converted from conditionally accepted to finally accepted, and AAA is then bound by the terms of the sale. If this ratio exceeds a predetermined percentage, the order is rejected and electronically sent back to AAA's telephone center for follow up with the customer. The employee generates daily and monthly reports of accepted and rejected orders.

### ***Ruling Request***

AAA respectfully requests a binding PLR from the Department confirming that:

1. The receipt of a customer's acceptance of AAA's unconditional offer to sell occurs at the CITY location pursuant to 86 Ill. Adm. Code § 130.2010; and
2. Since the final order acceptance occurs at AAA'S location in CITY, the proper situs of the sale for ROT purposes such that the state and local tax rate (including CITY HRMROT) in effect in CITY applies.

## ***Relevant Authorities***

A home rule municipality, like CITY, may impose a ROT on companies engaged in selling at retail within the municipality. 65 ILCS 5/8-11-1; see Ill. Admin. Code tit. 86, §§ 270.101(a), 270.115(a)(1).

The Department's regulations provide that 'the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling' 86 Ill. Admin. Code 270.115(b)(1). Furthermore, the regulation states that if a purchase order which is an acceptance of the seller's *complete and unconditional* offer to sell is received by the seller's place of business within the home rule municipality or by someone working out of such place of business, the seller incurs Home Rule Municipality Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives the physical possession of the property in Illinois. *Id.*

Therefore, under the Department's regulation, where a sale is situated for municipal retailer's occupation tax hinges on where the offer to sell becomes complete and unconditional. The Department has issued a number of PLRs illustrating where a sale is situated. In PLR 87-0340 (May 14, 1987), the Department stated that the determination of where a sale is made is a question of 'fact as to where the purchase order is subject to acceptance. The business procedures or procedures surrounding the making of a binding agreement to sell on the part of a given dealership is going to control the question of which municipality is entitled to the tax.' *Id.*

The facts in PLR 87-0340 deal with an auto dealership headquartered and licensed in 'City A' that conducted two large used car sales at the County Fairgrounds in 'City B.' (Although not labeled in the PLR, for reasons of clarity we are referring to the two locations as 'City A' and 'City B'). Although more details about how the transactions took place were not provided, the Department did state, 'if a car dealer receives a purchase order in City B, but then transmits the purchase order to the dealership location in where they may run a credit check on the potential buyer for financing purposes or other purposes, this would indicate that the purchase order is not subject to final acceptance at City B, but rather is subject to final acceptance at the dealership location.' *Id.* The Department indicates that if a credit check is the final step in approving a sale 'completely and unconditionally,' then the sale is situated for Municipal Retailers' Occupation Tax purposes where this credit check is performed.

In PLR 91-0162 (March 5, 1991), dealing with a multi-step approval process, the Department followed its 'complete and unconditional' test by confirming that the situs for sales tax purposes is where the final acceptance step occurred. PLR 91-0162 describes an oil marketing and distribution company that used the following approval process: First, an order is taken by a customer service clerk who processes the order and determines if the customer has a commercial account. If the customer has a commercial account, the order is sent to the credit manager for credit approval at an unnamed location. If credit is approved, the order then goes to the Executive Vice President (based in the same location) for price determination and pricing authority. The order is then forwarded to the billing/pricing clerk for processing (who is also at the same location).

Once processed, the order is then relayed to the company's commercial sales office in CITY2, Illinois where it goes through a final acceptance process. The commercial sales manager compares each order to a master customer record to verify the accuracy of the customer's name, address, account number, product and quantity ordered, and special care instructions pertaining to delivery. If the order is deemed accurate, the order is accepted. Only after the commercial sales manager accepts an order will the order be faxed to the dispatch center (at a separate location) for release. If an order is somehow inaccurate, the defect must be cured before the product will be released.

The company stated that in addition to sales tax savings for its customers, the CITY2 office is utilized primarily for administrative and personnel cost efficiencies. The company stated that based on its procedure for processing commercial sales, it believes that the ROT should be situated in CITY2, Illinois. Based on the facts the company provided, the Department agreed with company's conclusion.

The department recently confirmed this treatment in PLR 01-0008 (February 16, 2001). The Department reiterated that the most important factor in determining where the sale occurs is 'the sellers acceptance of the purchase order or other contracting action in the making of the sales contract. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred.' *Id.*

The facts in 01-0008 deal with a computer hardware retailer headquartered in 'City A' and with sales offices in 'City B' and 'City C.' (Although not labeled as such in the PLR, for reasons of clarity, we are referring to the three Illinois cities as City A, City B, and City C.) Customers submit purchase orders via telephone, facsimile, or email to a sales or customer service representative at the sales office in City C or the headquarters in City A. The representative then enters the customer's purchase order into the company's sales order system. The order is sent electronically to the mainframe computer in City A, where price and credit tests are performed. These tests verify that the price on the purchase order matches the company's pricing data, and that the customer has sufficient credit available for that order. If an order passes these two tests, it is batched with the other pending orders and sent electronically to the sales office in City B. The computer in City B verifies that order passes the price and credit tests, then performs an additional 'prohibitive customer' test. This test looks at additional factors not considered as part of preliminary testing in City A, including bankruptcy and other credit risks. Only if a pending order passes the 'prohibitive customer' test does the company accept the order. Once the order is accepted, it is sent to the customer service department for fulfillment. Based on these facts, the Department concurred with the taxpayer's conclusion that the company's sales to customers in Illinois are subject to local sales tax in City B.

The Department's analysis in Private Letter Rulings 87-0340, 91-0162, and 01-0008 demonstrate how the AAA'S transactions should be treated. AAA receives orders from a number of sources which are then entered into a mainframe. Preliminary credit checks are performed and the orders are marked conditionally approved. The conditionally approved orders are then transmitted electronically to AAA's CITY location for final order approval. Final order acceptance occurs when the PC/employee in CITY performs the final check on the order, and not until that check is satisfied is AAA bound to perform.

## **Conclusions**

The facts indicate that the excessive transportation check performed by the PC/employee in CITY is the final action necessary to bind AAA to the sale.

We respectfully request that the Department issue a ruling confirming, based on the facts presented above, that the direct-ship catalog sales of AAA are properly situated in CITY and that the CITY sales tax rate applies to the sales transactions.

If the Department cannot so conclude, I request that the Department contact me to determine what additional information is required or allow the taxpayer to rescind the ruling request. Please contact me with any questions or to schedule a meeting to discuss any aspect of this ruling request. We appreciate your response on these issues.

As you know, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order or other contracting action in the making of the sales contract. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred.

Based upon the facts set forth in your letter, the final order acceptance that occurs when the AAA employee at the CITY office performs the final check on the order and binds AAA to perform, establishes CITY as the jurisdiction whose local tax rate applies to sales by AAA.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.